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COMPENSATION COMMISSION
GOVERNING COUNCIL

Decision concerning claims filed by individuals seeking compensation for direct losses sustained by Kuwaiti companies taken by the Governing Council of the United Nations Compensation Commission at its 105th meeting, held on 15 March 2001 at Geneva

The Governing Council,

Noting that, pursuant to decision 7 of the Governing Council (S/AC.26/1991/7/Rev.1), claims for direct loss, damage, or injury to corporations and other entities as a result of Iraq's invasion and occupation of Kuwait may be submitted by each Government on behalf of corporations and other entities incorporated or organized under its law;

Noting also that, pursuant to the Provisional Rules For Claims Procedure, adopted by decision 10 of the Governing Council (S/AC.26/1992/10), claims for such losses are submitted in category "E";

Noting further that, notwithstanding the foregoing, some individuals who owned and/or operated Kuwaiti companies filed claims in categories "C" and "D" for direct losses sustained by the company as a result of Iraq's invasion and occupation of Kuwait;

Noting that some of these claims concern losses for which claims were also filed by the Kuwaiti company in category "E" ("overlapping claims");

Noting also that some of these claims concern losses for which no duplicative claim has been filed by the Kuwaiti company in category "E" ("stand alone claims");

Bearing in mind that the category "C" and "D" claim forms do not envisage the filing by individuals for losses suffered by a corporate

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entity, and that individuals were not entitled to claim in their own right for such losses;

Considering that the Governing Council has reviewed information from the secretariat concerning the business practices existing in Kuwait prior to and following Iraq's invasion and occupation of Kuwait and the legal and factual issues presented by overlapping and stand alone claims;

Considering also that the secretariat is required to request information from claimants in categories "C", "D" and "E4" in order to identify the extent and nature of overlapping and stand alone claims;

Considering further that, although it is charged with determining the amount of compensation to which claimants are entitled for direct losses resulting from Iraq's invasion and occupation of Kuwait, it is not within the mandate of the Commission to determine the respective entitlements of category "C" and/or "D" and category "E4" claimants to all or part of an award of compensation where there are overlapping claims, or to determine comparable issues that may arise in respect of stand alone claims;

Considering, however, that the Governing Council believes that due regard should be given to the claims submitted by non-Kuwaiti individuals in relation to losses suffered by Kuwaiti corporate entities,

Considering also that several member states of the Governing Council suggested that bilateral committees be established, involving in each case Kuwait and a Government or other submitting entity filing any overlapping or stand alone claims, to make timely determination of the respective entitlements of category "C" and/or "D" and category "E4" claimants to all or part of an award of compensation where there are overlapping claims or to determine comparable issues that may arise in respect of stand alone claims;

Noting that guidelines were subsequently drafted to govern the work of the bilateral committees (the "guidelines");

Noting also that the Commission can implement the determinations on entitlements made by the bilateral committees pursuant to the guidelines, which determinations shall be made solely by the bilateral committees with no intervention by the Commission;

Noting further that the guidelines enter into force with respect to a submitting entity when it has formally adhered thereto;

Noting that Kuwait irrevocably has delegated to the Commission authority to distribute payments to non-Kuwaiti claimants in connection with overlapping and stand alone claims, as irrevocably determined by the bilateral committees and notified to the Commission (the "delegation of payment");

Noting also that, pursuant to the guidelines, each submitting entity assumes responsibility for fulfilling the payment and reporting requirements set out in Governing Council decisions 18(S/AC.26/Dec.18 (1994)) and 48(S/AC.26/Dec. 48(1998)) with respect to such payments;

1. Decides to adopt provisions of the guidelines, and thereby commits the Commission, as follows:

(a) Directs the Executive Secretary to group overlapping claims relative to the losses suffered by a category "E4" claimant in order to permit the category "E4" Panels of Commissioners to make recommendations on awards of compensation suffered by the Kuwaiti company;

(b) Directs the Executive Secretary to identify and process in category "E4" as Kuwaiti corporate claims those stand alone claims for which the individual claimant has been found by the category "D" Panels of Commissioners to have authority to file a claim on behalf of the company;

(c) Decides to authorize the Executive Secretary to transmit to relevant submitting entities and to Kuwait documents and information that relate to the Kuwaiti company concerned or that may concern losses for which another claimant has or might have asserted a claim;

(d) Decides to authorize the Executive Secretary to disclose to the bilateral committees information received from submitting entities on behalf of claimants in category "C", "D" and "E4";

(e) Decides that, within the limits of duly registered claims, the decisions of the bilateral committees pursuant to the guidelines will be carried into effect by the Executive Secretary on behalf of the Commission when payment is made;

(f) Decides, having reviewed the guidelines, to authorize the delegation of payment submitted by the Government of Kuwait;

(g) Directs, reflecting Kuwait's irrevocable delegation of authority in this connection, the Executive Secretary to make payments on Kuwait's behalf to Governments and other submitting entities on behalf of individual claimants of the portions of awards of compensation to which such individual claimants are entitled, as determined by the bilateral committee under the guidelines; and

2. Invites Governments and other submitting entities having overlapping and stand alone claims to adhere to the guidelines;

3. Notes that, in the absence of such adherence, no payment to individual claimants with respect to overlapping and stand alone claims can be made to such Governments and other submitting entities;

4. Annexes copies of the guidelines and the delegation of payment.

Annex I

GUIDELINES FOR THE WORK OF BILATERAL COMMITTEES TO BE FORMED TO RESOLVE CERTAIN ISSUES INVOLVING THE STATE OF KUWAIT AND OTHER STATES RELATING TO OVERLAPPING CLAIMS AND STAND ALONE CLAIMS AT THE UNITED NATIONS COMPENSATION COMMISSION

ACKNOWLEDGING THAT:

The United Nations Compensation Commission ("UNCC") was established in 1991 pursuant to United Nations Security Council ("Security Council") resolution 692 (1991) to process claims and to pay compensation for any direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of the State of Kuwait ("Kuwait"), and to administer the fund created to pay such compensation;

The Public Authority for the Assessment of Compensation for Damages Resulting from the Iraqi Aggression ("PAAC") was established by Amiri Decree No. 6 of 1991 as the entity responsible on behalf of Kuwait for coordinating Kuwait's response to the UNCC claims process, for submitting claims on behalf of Kuwait and Kuwaiti individuals and corporations, and for disbursing compensation awarded by the UNCC to Kuwaiti claimants;

Upon reviewing the pilot group of category "D" claims for "D8/D9" business losses, it became apparent to the UNCC that certain of these claims include losses relating to companies incorporated in Kuwait. In some of these cases, the Kuwaiti company has also submitted a claim for the same business losses in category "E4" ("Overlapping Claims"). In other cases, there is no corresponding category "E4" claim submitted by the Kuwaiti company ("Stand Alone Claims");

Further investigation by the UNCC indicates that Overlapping Claims may also involve individual claims filed in category "C" that have already been processed and for which compensation awards have been approved by the Governing Council of the UNCC ("Governing Council") and paid;

Since the relevant business losses in both Overlapping Claims and Stand Alone Claims relate to companies incorporated in Kuwait, PAAC is the appropriate body to disburse any compensation awards in respect thereof;

With respect to Overlapping Claims, the panels of Commissioners are in a position to review all of the evidence relating to the claimed losses, damage and injury provided by the category "C"

and/or "D" and category "E4" claimants, and it is preferable for a determination of such losses, damage and injury to be made in the context of the review of both claims pending before the UNCC;

With respect to Stand Alone Claims, the evidence may show that an individual had authority to act on behalf of a Kuwaiti company that did not file a claim in category "E4", including bringing claims on behalf of that company;

The Governing Council considers that the UNCC does not have jurisdiction to determine the respective rights of category "C" and/or "D" and category "E4" claimants vis-a-vis each other where there are Overlapping Claims, or to determine comparable issues that may arise in respect of Stand Alone Claims. Therefore, it is considered appropriate to establish bilateral committees involving in each case Kuwait and a state submitting any Overlapping or Stand Alone Claim that will make timely determinations of such rights and issues, and the UNCC has committed itself to provide facilities for the use of such bilateral committees at its headquarters;

The purpose of the bilateral committees is to assess and determine a fair and equitable allocation of the compensation, which may in due course be awarded by the Commission in relation to losses of Kuwaiti corporate entities, to claimants in Overlapping Claims or Stand Alone Claims, in such a manner that the allocation, expressed as a percentage share or shares of losses duly claimed, shall be communicated to the Commission and applied by it when disbursing the amounts awarded in due course;

With respect to both Overlapping Claims and Stand Alone Claims, Kuwait has irrevocably delegated to the UNCC the authority to distribute such portions of compensation awards as may be disbursed to category "D" claimants, and has irrevocably delegated to the relevant submitting entities as defined in article 5, paragraph 1 of the Provisional Rules for Claims Procedure ("Rules") (S/AC.26/1992/10), the responsibility for discharging the reporting requirements of Governing Council decision 18 (S/AC.26/1994/18);

The compensation awards will be paid from the United Nations Compensation Fund ("Fund") created under Security Council resolution 692 (1991). The Fund operates in accordance with the United Nations Financial Regulations and Rules, and enjoys, in accordance with Article 105 of the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, the status, facilities, privileges and immunities granted to the United Nations.

THEREFORE GUIDELINES ARE ADOPTED AS FOLLOWS:

Article 1

Upon the Governing Council adopting provisions of these guidelines, Kuwait and any state or international organization that has submitted any Overlapping or Stand Alone Claim to the UNCC and has notified its adherence to the guidelines to the Executive Secretary of the UNCC ("Adhering State") shall be mutually obligated as set forth herein. The guidelines shall become effective in each case upon such notification to the Executive Secretary of the UNCC, who has undertaken promptly to notify Kuwait of each such adherence.

Article 2

A separate bilateral committee shall be established between Kuwait and each Adhering State which shall, in the case of Overlapping or Stand Alone Claims, determine the respective entitlements of category "C" and/or "D" claimants to all or part of any compensation award made in the name of a Kuwaiti company. The term "entitlements" herein means the percentage share or interest of the respective claimant(s) in the claim(s) submitted, based on ownership shares and/or interests, and taking into account any outstanding obligations between the individual(s) and the Kuwaiti company.

Article 3

Such bilateral committee shall consist of three members, each of whom shall be able to act impartially, none of whom may be a Commissioner of the UNCC and, preferably, none of whom shall be an employee of Kuwait or the Adhering State. Kuwait and each Adhering State shall each appoint one such member within thirty days following the latter's adherence to the guidelines. In accepting to serve on a bilateral committee, the members undertake to respect the confidentiality of the documents that may be called upon to review in order to make their determinations.

Article 4

Within thirty days of adherence to these guidelines by the first state to become an Adhering State, the Executive Secretary shall appoint an appointing authority that shall appoint a single individual to serve as the third member and chairman of each bilateral committee to be established pursuant to these guidelines ("Umpire"). The Umpire may not have the nationality of either Kuwait or any state that is known to have submitted any Overlapping or Stand Alone Claim to the UNCC.

Article 5

The procedures set forth in articles 3 and 4 above shall apply in respect of the filling of any vacancy on any bilateral committee occurring by virtue of death, resignation, incapacity or removal.

Article 6

If any member of any bilateral committee is not appointed as provided above in articles 3 and 5, then the other member and the Umpire shall nonetheless proceed to make determinations, with the Umpire having the casting vote. If two such members of any bilateral committee have not been so appointed, then the Umpire shall nonetheless proceed to make determinations alone.

Article 7

Kuwait or the Adhering State may request the removal of any member of any bilateral committee if circumstances exist that give rise to justifiable doubts that such member is able to meet the requirements of articles 3 and 4. Any such request must be made within fifteen days after the appointment of such member or after the facts on which it is based became known to the requestor and shall be decided by the appointing authority designated pursuant to article 4.

Article 8

Any fees and expenses of the two members of any bilateral committee other than the Umpire shall be paid directly to each by Kuwait and the Adhering State, respectively. Any fees and expenses of the Umpire, as well as any expenses of any bilateral committee as such, shall be payable in advance by Kuwait and each Adhering States in amounts proportional to the number of days required to resolve their respective claims referred to the Umpire for decision, as set out in article 13 below.

Article 9

Each bilateral committee shall meet in Geneva, Switzerland, at the headquarters of the UNCC, and shall itself decide on its procedures.

Article 10

No bilateral committee shall have any independent power or obligation to collect or to receive any evidence, information or representations from any source whatsoever other than information provided by Kuwait and the submitting entities to the UNCC under the Rules, including article 34. Accordingly, each bilateral committee shall make its determinations solely on the basis of the information provided by Kuwait and the submitting entities to the UNCC.

Article 11

Each bilateral committee shall make its determinations with due regard for applicable principles of law and commercial practices.

Article 12

It is anticipated that the two members of each bilateral committee other than the Umpire should be able in many cases to agree on a determination. Therefore, the Umpire shall participate in determinations of a bilateral committee only if, and then only to the extent that, the other two members are not in agreement. Where, however, the two members of any bilateral committee other than the Umpire are not in agreement as regards any determination to be made, such determination shall be made by a majority of all three members, with the exception of the circumstances set out in article 15.

Article 13

The cost of the Umpire shall be assessed at a reasonable daily rate not to exceed the daily rate paid to UNCC commissioners for their work in reviewing claims. Kuwait and the Adhering State also agree to assume the reasonable expenses incurred by the Umpire in relation to the work described in article 12 above.

Article 14

All determinations of any bilateral committee shall be final and binding and shall not be subject to any appeal, review, correction, modification or revision whatsoever, whether at the request of Kuwait or the Adhering State or at the request of a claimant, and regardless of the forum.

Article 15

The bilateral committees shall be bound by the requirements of the work schedule of the UNCC and shall, in particular, schedule their meetings in coordination with the approval of reports and recommendations by the Governing Council. If a bilateral committee has not made a determination on entitlement by thirty days prior to the scheduled date for signature of the panel report and recommendations considering the relevant claim(s), the Umpire alone shall make such determination.

Article 16

In the event that, with respect to any Overlapping Claim submitted by an Adhering State, there also exists any Overlapping Claim submitted by any other Adhering State (collectively "Related Overlapping Claims"), all determinations that otherwise would fall to be made by any bilateral committee shall be made by the Umpire alone, after meeting together with all other members of any bilateral committee established pursuant to the terms of these guidelines that is acting in respect of any Related Overlapping Claim. The provisions of articles 2 through 15 above shall apply in such event *mutatis mutandis*.

Article 17

Kuwait and each Adhering State undertake to obtain from each of their respective claimants authorization to allow the secretariat to transmit to the other submitting entity concerned documents and other information in their claim files that may relate to losses for which another claimant has or might have asserted a claim. With respect to stand alone claims, Kuwait undertakes to use its best efforts to produce for the Kuwaiti company that has not filed a claim those documents that it is requested to submit for all other Kuwaiti corporate claims. These documents would include, for example, articles of association and audited financial statements filed with Kuwaiti regulatory authorities. In addition, Kuwait and each Adhering State undertake to obtain authorizations to submit the complete claim files of their respective claimants through the UNCC to the bilateral committees.

Article 18

By adhering to these guidelines, the Adhering State accepts responsibility for fulfilling the payment and reporting requirements set out in Governing Council decisions 18 (S/AC.26/Dec.18 (1994)) and 48 (S/AC.26/Dec.48 (1998)) with respect to any portion of the compensation award to which the category "C" and/or "D" claimant has been determined to be entitled.

Article 19

These guidelines shall remain in effect as to Kuwait and any Adhering State until they are notified by the Executive Secretary of the UNCC that there are no determinations left to be made by the bilateral committee and that there are no payments left to be made by the Commission with respect to Overlapping and Stand Alone Claims.

Article 20

Any dispute arising over the interpretation of these guidelines shall be settled finally by the Umpire upon the request of either Kuwait or an Adhering State.

Article 21

The UNCC shall not be held accountable for any action taken or determination made by the bilateral committees pursuant to these guidelines.

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Annex II

IRREVOCABLE DELEGATION OF AUTHORITY TO DISTRIBUTE PAYMENTS

The Government of the State of Kuwait, represented herein by the Public Authority for Assessment of Compensation for Damages Resulting from the Iraqi Aggression ("Kuwait"), hereby irrevocably delegates to the United Nations Compensation Commission the responsibility for disbursing to non-Kuwaiti claimants, their portion, if any, of amounts of compensation that shall be recommended by "E4" panels of Commissioners and awarded by the Governing Council in the name of Kuwaiti companies; such portions resulting from determinations made by Bilateral Committees in accordance with the Guidelines for the Work of Bilateral Committees ("guidelines"), provisions of which have been adopted by the Governing Council in its decision.

Kuwait undertakes not to deduct from such compensation awards the processing fees contemplated in Governing Council decision 18.

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